IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1639 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANISHANKER DAYARAM THAKER
Versus
MAHESH DAMODARBHAI

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Appearance :
MR NIRAV C THAKKAR for Petitioner.
MS KRUTI J VORA for Respondent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 04/05/2006

ORAL JUDGMENT

Rule. Ms.Kruti Vora, learned advocate waives service of notice of rule on behalf of the respondent. With the consent of the parties, matter is taken up for final hearing today.

By filing this petition, the petitioner has challenged the order passed by the learned Presiding Officer, Fast Track Court No.7, Jamkhambhaliya, dated 19-9-2005 passed in Misc. Civil Appeal No.32/2003. The present petitioner is the original defendant of Regular Civil Suit No.42/1995. Said suit is filed for declaration and injunction restraining the original defendant from making any construction in the disputed property. In the aforesaid suit, the present petitioner gave an application at Exh.89, requesting the Court to permit him to clean the safety tank in view of hygienic condition of it. It was also stated in the said application that he will restore the possession back after cleaning the safety tank. Accordingly, it was requested that order passed below Exh.5 by the trial Court may be modified to that extent by permitting the defendant to clean the safety tank situated in the suit premises.

Since the trial Court has rejected said Exh.89 application, an appeal being Civil Misc. Appeal No.32/2003 was preferred against it before the appellate Court. However, learned Appellate Judge has also rejected the prayer of the defendant against which present petition is filed under Articles 226 and 227 of the Constitution of India.

Mr.Nirav Thakkar, learned advocate for the petitioner submitted that in view of hygienic condition filthy smell is coming out from the safety tank and, therefore, the petitioner – original defendant may be permitted to carry out the cleaning operation of the safety tank and after completing said work, the defendant will put the same back in its original position as, according to him, some digging work is required to be carried

out for the purpose of cleaning the safety tank.

Mr.Vora, learned advocate for the respondent submitted that the defendant (petitioner herein) may be directed to file an undertaking that he will restore the possession after cleaning the safety tank and he will also remove all the filthy things, after cleaning the safety tank.

Mr.Thakkar, learned advocate for the petitioner submitted that his client is ready to file such an undertaking before the trial Court within a period of one week from today.

In view of the above position, order passed by the trial Court below Exh.89 application in Regular Civil Suit No.42/1995 as well as the order passed by the appellate Court in Civil Misc. Appeal No.32/2003 are quashed and set aside. The petitioner herein is permitted to carry out the cleansing operation of safety tank at his own cost. The petitioner may file appropriate undertaking in this behalf before the trial Court on or before 15th May, 2006. In such undertaking, it should be provided that after cleaning operation, he will restore the possession of the safety tank and it would be placed in appropriate condition after carrying out digging operation. Copy of such undertaking may be given to the original plaintiff.

Mr.Thakkar, learned advocate for the petitioner has assured the Court that after completing the cleaning work, his client will obey the order of status-quo granted below Exh.5 application by the trial Court.

Accordingly, this petition is allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs. Since the suit is of 1995, in order to see that parties are not required to approach the Court for getting any interim order, trial Court may dispose of Regular Civil Suit No.42/1995 as early as possible and in any case within a period of six months from the date of receipt of writ from this Court.

Writ to be sent to the trial Court forthwith.

(P.B.MAJMUDAR, J.)

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